

FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4783

DATE COMPLAINT FILED: August 5, 1998

DATE OF NOTIFICATION: August 10, 1998

DATE ACTIVATED: October 27, 1998

STAFF MEMBERS: Seth H. Row
Mark Shonkwiler

COMPLAINANT(S):

Peter F. Cloeren
Cloeren Incorporated

RESPONDENT(S):

Dr. Brian Babin
Brian Babin for Congress and Thomas E. Freeman, as treasurer
Walter Whetsell

Honorable Thomas Dale DeLay
Tom DeLay Congressional Committee, and David Evans as
treasurer

Honorable Strom Thurmond
Palmetto Leadership PAC (FKA Reelect Thurmond Committee)
and J. Kershaw Spong, as treasurer
Gayle O. Averyt

Steven Lee Gill
Anne Coates
Edward H. Cone

Peter F. Cloeren
Cloeren, Inc.
Keith and Robin Johnston
Rolf and Linda Schulz

22-04-405-4209

Claude W. and Felicia Huckaby
Tony and Nancy Dallas
Robert E. and Mildred A. Frank
Bobby Frank
Holly Ngoc Vu
Thang Ngoc Vu
Jack and Cyndi Tindel
Roy and Billie M. Locks
Robert H. Ewing
Gertie M. Ewing
Cheryl David
Joe and Nancy Sanders
Ken and Norma Johnson
Rose Jean Lucia
Mike and Cynthia Lucia
Paul and Leigh Ann (Lisa) Peveto
Gary Oliver
Jaquelyn Oliver

RELEVANT STATUTE(S):

2 U.S.C. § 441a
2 U.S.C. § 441f
2 U.S.C. § 441b(a)
2 U.S.C. § 441g
2 U.S.C. § 432(c)(2)
11 C.F.R. § 103.3(b)(2)
11 C.F.R. § 110.4(b)
11 C.F.R. § 110.4(c)
11 C.F.R. § 110.6
11 C.F.R. § 114.2
11 C.F.R. § 114.9(e)

INTERNAL REPORTS CHECKED:

FEC Indices
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

22-04-405-4210

I. GENERATION OF MATTER

The Federal Election Commission ("Commission") received a combined complaint and sua sponte submission from Peter Cloeren and Cloeren, Incorporated (collectively, "Complainant") which, inter alia, admits that Mr. Cloeren approved and his company made prohibited corporate contributions in the name of another, through certain employees of Cloeren, Inc., to the authorized campaign committee of Dr. Brian Babin, a candidate for the House of Representatives in 1996. The Complaint also alleges that Dr. Babin, his authorized campaign committee, Babin for Congress 1996, ("Babin Committee"), and Babin Committee employee Walter Whetsell knowingly and willfully assisted Mr. Cloeren in making these illegal contributions and that the Babin Committee knowingly accepted these contributions.

Complainant further alleges that Dr. Babin, Mr. Whetsell and others, particularly Congressman Tom DeLay, the Tom DeLay Congressional Committee, ("DeLay Committee"), and DeLay Committee employee Robert Mills, assisted him in making other illegal indirect contributions to the Babin Committee by establishing various schemes to channel contributions to the Babin Committee through two other campaign committees. Complainant alleges that the authorized committee of Steven Lee Gill in the 1996 race - Gill for Congress ("Gill Committee"),¹ contributors to the Gill Committee, the authorized committee of Senator Strom Thurmond - Reelect Thurmond Committee ("Thurmond Committee"),² a contributor to the Thurmond Committee,

¹ Mr. Gill's authorized campaign committee, Gill for Congress, terminated after the general election in 1996.

² The Thurmond Committee now operates as the Palmetto Leadership PAC, a qualified multicandidate political committee.

were all participants in these alleged schemes.

II. SUMMARY

In 1996, Dr. Brian Babin ran for the open House seat in Texas' Second District. After declaring his candidacy in late 1995, Dr. Babin faced a primary challenge in March, 1996, and then a run-off in May, 1996, which he won. Dr. Babin then lost in the general election to the Democratic candidate, Congressman Jim Turner, in November, 1996.

Peter Cloeren is President and CEO of a plastics manufacturing company, Cloeren, Inc., the headquarters of which is located in Orange, Texas. Cloeren, Inc. is majority owned and controlled by Mr. Cloeren and his father. Mr. Cloeren admits that in addition to making legal personal contributions to the Babin Committee, Mr. Cloeren directed Cloeren, Inc. to make illegal contributions through Cloeren, Inc. employees and their family members. Mr. Cloeren and Cloeren, Inc. have already been criminally convicted for this activity. In June, 1998, Mr. Cloeren and Cloeren, Inc. pled guilty in U.S. District Court for the Eastern District of Texas to making \$37,000 in contributions in the name of another to the Babin Committee in 1995 and 1996. Mr. Cloeren and Cloeren, Inc. each were fined \$200,000 and Mr. Cloeren was sentenced to 100 hours of community service.

The Complaint deals with two distinct categories of activity, which are addressed separately below. The details of the activity for which Mr. Cloeren and Cloeren, Inc. were convicted are discussed in Section III of this Report. The Complaint also includes allegations which are not related to the conduct for which Mr. Cloeren and Cloeren, Inc. were convicted. The allegations are discussed in Section IV of this Report. In support of

both categories of claims, Complainant offers his own recollection of conversations with Dr. Babin, Mr. Whetsell and others, and letters from Dr. Babin. Complainant also alleges that there is other evidence in the possession of the Department of Justice ("DOJ") which proves his allegations. Respondents generally deny Complainant's allegations.

A. Allegations

The Complaint makes three sets of allegations involving the conduct of others which do not implicate First, Complainant alleges that Dr. Babin, the Babin Committee and Walter Whetsell violated the Federal Election Campaign Act ("the Act") by assisting him in making the contributions in the name of another for which Mr. Cloeren and Cloeren, Inc. were convicted. Specifically, the Complaint alleges that Dr. Babin and Mr. Whetsell encouraged Mr. Cloeren to make corporate contributions through Cloeren Inc. employees, assisted Mr. Cloeren in making these illegal contributions, and that the Babin Committee accepted these illegal contributions knowing how the money had been raised.

Second, Complainant alleges that the Babin Committee accepted an illegal corporate contribution when Cloeren, Inc., at the Babin Committee's request, paid for a charter flight which brought Congressman Tom DeLay to a Babin Committee event in August, 1996.

Third, Complainant makes miscellaneous allegations regarding Dr. Babin's receipt of cash contributions and another in-kind contribution of air travel.

B. Allegations

Complainant alleges that Dr. Babin, Mr. Whetsell and others -- specifically

Congressman Tom DeLay, and DeLay Committee official Robert Mills -- assisted him in making other illegal contributions to the Babin Committee.

22-04-405-4213

Complainant also alleges that Dr. Babin, Mr. Whetsell and others established a quid pro quo contribution scheme whereby Mr. Cloeren contributed to the Gill Committee and the Thurmond Committee, in return for which Thurmond and Gill supporters made contributions to the Babin Committee.³

³ Complainant appears to allege that these transactions violated 2 U.S.C. § 441f's prohibition on contributions in the name of another.

III. **FACTUAL AND LEGAL ANALYSIS - ALLEGATIONS TO REMAIN IN MUR 4783**

A. **Cloeren, Inc. Contributions in the Name of Another and Prohibited Corporate Contributions**

1. **Law**

Under the Federal Election Campaign Act ("the Act"), a corporation may not make contributions in connection with the election of a candidate for federal office, and an officer or director of a corporation is prohibited from consenting to the making of a corporate contribution in connection with the election of a federal candidate. 2 U.S.C. § 441b(a).

The Act also prohibits: (1) making a contribution in the name of another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a contribution in the name of another.⁴ 11 C.F.R. § 110.4(b)(1)(iii). This prohibition also applies to any person that provides money to others to effect contributions in their names, 11 C.F.R. § 110.4(b)(2), and to incorporated or unincorporated entities who give money to

⁴ This regulation "applies to those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another..." 54 Fed. Reg. 34,105 (1989). In Central Bank of Denver v. First Interstate Bank of Denver, N.A., 511 U.S. 164 (1994), the U.S. Supreme Court held that private plaintiffs could not maintain an aiding and abetting action under § 10(b) of the Securities and Exchange Act of 1934 or Rule 10b-5 thereunder because the text of § 10(b) did not provide for aiding and abetting liability. This ruling, however, does not affect the validity of 11 C.F.R. § 110.4(b)(1)(iii), which arguably goes beyond the text of 2 U.S.C. § 441f in imposing liability for assisting in making contributions in the name of another. The Central Bank opinion did not address an agency's authority to promulgate prophylactic rules, which commonly enlarge the scope of the statute; indeed, the Court upheld the Security and Exchange Commission's authority to promulgate such a rule in a post-Central Bank decision. U.S. v. O'Hagan, 117 S.Ct. 2199, 2217 (1997). Imposing liability on those who assist in making contributions in the name of another through 11 C.F.R. § 110.4(b)(1)(iii) also serves a prophylactic purpose.

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another to effect a contribution made in the other person's name. See AO 1986-41.

Under the Act, candidates and political committees are prohibited from accepting any contributions in excess of the Act's limitations, 2 U.S.C. § 441a(f), and are prohibited from accepting corporate contributions. 2 U.S.C. § 441b(a).

The treasurer of a political committee is responsible for examining all contributions received by the political committee for evidence of illegality. 11 C.F.R. § 103.3(b).

Contributions that present genuine questions as to whether they were made by legal sources may be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(1). If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution. 11 C.F.R. § 103.3(b)(1).

If the treasurer determines that at the time a contribution was received and deposited, it did not appear to be made in the name of another or exceed contribution limits, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution within thirty days of the date on which the illegality was discovered. 11 C.F.R. § 103.3(b)(2).

The Act addresses violations of law that are knowing and willful. See 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

The knowing and willful standard requires knowledge that one is violating the law. Federal Election Commission v. John A. Dramei for Congress Committee, 640 F. Supp. 985 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. United States v. Hopkins,

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916 F.2d 207, 214 (5th Cir. 1990). In Hopkins, the court found that the defendant officers "knew that corporations could not make political contributions" and that an inference of a knowing and willful violation could be drawn "from the defendants' elaborate scheme for disguising their corporate political contributions" as individual contributions. Id. at 214-15.

2. Facts

Complainant alleges that he first met Dr. Babin in December, 1995, at which time— Dr. Babin asked Mr. Cloeren to raise \$50,000 for his campaign. In response to Mr. Cloeren's offer to give Dr. Babin a company check, Dr. Babin allegedly told Mr. Cloeren that contributions could only come from individuals, stated that he did not care where the contributions came from, and suggested that Mr. Cloeren "work with loyal employees" to raise the funds. Complaint at 2. Complainant states that he understood Dr. Babin to be suggesting that Cloeren, Inc. make contributions to the Babin Committee through Cloeren, Inc.'s employees. Complainant admits that after this conversation Mr. Cloeren asked several employees to make contributions to the Babin Committee which were reimbursed by the corporation. Complainant alleges that Dr. Babin came to Cloeren's office in late December, 1995 to collect contributions made by Cloeren, Inc. employees.

The Complaint alleges that after the March 6, 1996 primary, which resulted in a run-off election, Dr. Babin again contacted Mr. Cloeren about getting other "loyal employees" to write contribution checks. Mr. Cloeren also allegedly discussed making contributions through his employees with Walter Whetsell, a Babin Committee employee, in March, 1996. Complainant again states that he understood Dr. Babin and Mr. Whetsell to be encouraging him to make further contributions through Cloeren, Inc. employees. Complainant admits that Mr. Cloeren again asked several employees to make contributions, which were reimbursed by the corporation.

Complainant alleges that Dr. Babin came personally to Cloeren, Inc.'s offices to pick up these contribution checks.

Complainant alleges that after Dr. Babin's victory in the May run-off, Dr. Babin wrote Mr. Cloeren asking for another \$50,000 in contributions. Complainant submits a copy of this note. Complainant alleges that he met with Dr. Babin in the "late summer of 1996" in the parking lot of Cloeren, Inc. and that at this meeting Dr. Babin acknowledged that Complainant was making contributions through his employees, and suggested that by making contributions through his employees, Complainant would not "get caught." Dr. Babin wrote to Mr. Cloeren again in August, 1996 asking Mr. Cloeren to "get the 'money machine' going again." Complainant says that he understood this to be a reference to making further contributions of corporate funds through his employees. A copy of the August, 1996 note is attached to the Complaint.

Complainant alleges that at a Babin Committee event on August 29, 1996, he had a conversation with Congressman Tom DeLay and Dr. Babin in which Mr. DeLay and Dr. Babin acknowledged knowing that Cloeren, Inc. was making contributions through its employees.⁵ Complainant admits that several employees made contributions to the Babin Committee in September, 1996 which were reimbursed by the corporation.

Complainant alleges that Dr. Babin telephoned Mr. Cloeren in the fall of 1996 for employment information about the employees who had written checks to Dr. Babin's campaign. According to the Complaint, Dr. Babin "made clear" to Mr. Cloeren that it would look better if

⁵ In this conversation, Mr. DeLay and Mr. Cloeren also allegedly discussed other ways that Mr. Cloeren could contribute to the Babin Committee,

contributors to the Babin Committee were not listed as Cloeren employees, and Dr. Babin was allegedly pleased when he was told that some Cloeren employees or their spouses were also employees of other firms.

Complainant alleges that in early 1998, after he became aware of a federal investigation into his contributions to the Babin Committee, he agreed to cooperate with the Federal Bureau of Investigations ("FBI"). According to the Complaint, Mr. Cloeren tape-recorded a conversation with Dr. Babin at the direction of the FBI in which Dr. Babin stated that a "disgruntled employee" of Cloeren must have talked to law enforcement, and that it was "a good thing that he or his son picked up all the checks in person or else the government would have us on mail fraud charges as well." Complaint at 5. Complainant also alleges that the FBI tape-recorded a conversation between Mr. Cloeren and Babin Committee official Walter Whetsell, in which Mr. Whetsell allegedly confirmed that Dr. Babin knew that Cloeren, Inc. had made contributions through its employees. Mr. Whetsell also allegedly stated that it was a good thing Dr. Babin had picked up the checks himself. Complainant alleges that the tapes of these conversations are in the possession of the Department of Justice ("DOJ").

On June 24, 1998 Peter Cloeren and Cloeren, Inc. pled guilty to misdemeanor violations of making \$37,000 in corporate contributions in the names of Cloeren, Inc. employees and their family members. Mr. Cloeren received a fine of \$200,000 and 100 hours of community service, and Cloeren Inc. was fined \$200,000.

Complainant alleges that on July 23, 1998, after he pled guilty, Dr. Babin wrote a letter to Mr. Cloeren that Complainant characterizes as an attempt to get Mr. Cloeren to stop cooperating

with law enforcement authorities. The letter is attached to the complaint.

Attached to the Complaint is a chart titled "Reimbursements of Contributions to Babin" in which Complainant purports to list the employees whom he admits wrote checks to the Babin Committee knowing they would be reimbursed with corporate funds, the amount contributed, and the date of contribution. Although Complainant pled guilty to making only \$37,000 in contributions in the name of another, Complainant's chart lists \$45,000 in contributions which were allegedly reimbursed through false travel and expense vouchers by Cloeren, Inc. Complainant offers no explanation for the difference between the amount of reimbursed contributions in the plea agreement and the amount referred to in the Complaint.

Respondents Dr. Brian Babin, the Babin Committee, and Walter Whetsell submitted a joint response in which they deny Complainant's allegations. Their Response points to statements made by the U.S. Attorney in Beaumont, Texas in August, 1998 that Dr. Babin is not under investigation by the U.S. Attorney's office for his alleged role in the activities for which Mr. Cloeren was convicted.

Respondents deny that Dr. Babin or any other person assisted Mr. Cloeren in making contributions through Cloeren, Inc.'s employees, and specifically deny that Dr. Babin or Walter Whetsell told Mr. Cloeren to make contributions through his employees. Even if some of the conversations alleged in the Complaint took place, according to Respondents, either Dr. Babin or Mr. Whetsell never made the specific statements alleged, or Complainant has wrongly characterized the statements as reflecting knowledge of or complicity in illegal activity.

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3. Analysis

a. Liability of Cloeren, Inc. and Peter Cloeren

Mr. Cloeren and Cloeren, Inc. admit in the Complaint and have admitted in court that Cloeren, Inc. knowingly and willfully made, and Peter Cloeren approved, prohibited corporate contributions from Cloeren, Inc. to the Babin Committee through Cloeren, Inc. employees.⁷ A chart attached to the Complaint and prepared by Complainant purportedly lists dates and amounts for each reimbursed contribution from Cloeren, Inc. employees to the Babin Committee. In this chart Complainant lists 29 individuals -- 17 of them Cloeren, Inc. employees -- as having made \$45,000, total, in reimbursed contributions. However, during its review of the Complaint and Babin Committee contribution reports which relate to this Complaint this Office identified three additional people who contributed to the Babin Committee in large amounts, and are either Cloeren, Inc. employees or appear to be family members of already-identified Respondents.⁸ Moreover, this Office identified additional contributions made by Respondents who are listed in the Complaint but which are not part of the total amount identified by Complainant as reimbursed contributions. Thus, according to the Babin Committee's reports to the Commission, as many as 32 people appear to have made a total of \$48,000 in contributions which may have

⁷ It is not clear either from the complaint or the plea agreement Complainant reached with the DOJ whether Complainant admits that all of the employee contributions were reimbursed by the corporation, and were thus illegal corporate contributions, or whether some were personal contributions by Mr. Cloeren. However, because the Complaint states that the employees were reimbursed through inflated or falsified expense or travel vouchers, and does not state that Mr. Cloeren personally reimbursed any employees, it appears that all of the contributions to the Babin Committee were corporate contributions.

⁸ All of the contributors listed in the Complaint are identified on Babin Committee filings either as employees of Cloeren, Inc., Chaparral Films, Inc. and Cloeren Transportation, Inc. (companies that were formerly subsidiaries of Cloeren, Inc.), or appear to be family members of these
(cont'd. next page)

22-04-405-4222

been reimbursed by Cloeren, Inc. in violation of 2 U.S.C. §§ 441f and 441b(a).

In sum, while Complainant's submission admits to knowingly and willfully making \$45,000 in illegal contributions, the information available to this Office suggests that Complainant may have knowingly and willfully made as much as \$48,000 in corporate contributions to the Babin Committee in the name of another, through 32 individuals.

b. Liability of Cloeren Employee Contributors

As noted above, this Office has identified 32 Babin contributors who either identified themselves as employees of Cloeren, Inc., or who appear to be family members of these employees and who this Office believes may have been reimbursed by Cloeren, Inc. A chart showing each contributor, the amount of their contribution, and the dates of their contributions is appended as Attachment 2.

employees.

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e. DeLay Involvement In Cloeren Employee Contributor Scheme

Complainant alleges that at an August 29, 1996 Babin Committee event Congressman Tom DeLay signified that he was aware that Complainant was making contributions in the name of another and informed Mr. Cloeren that there were other ways to make indirect contributions to the Babin Committee. However, because Complainant does not allege that Mr. DeLay or the DeLay Committee actually assisted Mr. Cloeren in making contributions in the name of another through Cloeren, Inc.'s employees, see 11 C.F.R. § 110.4(b)(1)(iii), this Office recommends that the Commission find no reason to believe that The Honorable Thomas Dale DeLay or Tom DeLay Congressional Committee and David Evans, as treasurer, violated 2 U.S.C. § 441f in connection with contributions by Cloeren, Inc. employees to the Babin Committee.

B. Congressman DeLay Flight to Babin Committee Event

Complainant alleges that in August, 1996 Dr. Babin asked Mr. Cloeren to pay to fly Congressman Tom DeLay and Robert Mills, a DeLay Committee aide, from Sugar Land, Texas to Orange, Texas for an August 29, 1996 Babin Committee event. Mr. Cloeren agreed to do this,

and Cloeren, Inc. paid \$1,320.00 to Mid-Coast Air Charter for the flight.²¹

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①

Congressman DeLay and the DeLay Committee deny that the DeLay Committee or Robert Mills knew that Cloeren had paid for the private plane which took Congressman DeLay and Mr. Mills to the Babin Committee event and assert that Congressman DeLay's staff was simply told by Dr. Babin's staff that the plane had been arranged.

²¹ Complainant submits a copy of an invoice for this flight, and a copy of a check made out to Mid-Coast from "The Cloeren Company." Cloeren, Inc. was formerly known as The Cloeren Company, and some of the letterhead and correspondence involved in this matter refer to Cloeren, Inc. in this way. However, at all times relevant to this Complaint Mr. Cloeren's business, under whatever name, was incorporated in Texas.

Because it

does not appear that Congressman Tom DeLay or the DeLay Committee received a contribution by taking the flight, or knew that Cloeren, Inc. paid for the flight, this Office recommends that the Commission find no reason to believe that The Honorable Thomas Dale DeLay and Tom DeLay Congressional Committee and David Evans, as treasurer, violated 2 U.S.C. § 441b(a).

C. Miscellaneous Cash and In-Kind Contribution Allegations

Complainant alleges that at a September 14, 1996 Babin Committee event Dr. Babin told Mr. Cloeren that Dr. Babin could collect \$200 per person per event from a cash contribution bowl. Complaint at 4. Respondents Dr. Babin and the Babin Committee did not respond to this allegation. Complainant does not allege that the Babin Committee actually took any specific amount of cash away from the event, but appears to be alleging that the Babin Committee may have violated the \$100 limit on cash contributions a committee may receive from any particular source, 11 C.F.R. § 110.4(c), or the \$50 limit on an anonymous cash contribution. 11 C.F.R. § 110.4(c)(3). However, Complainant provides no information other than the assertion about Dr. Babin's statement. This Office recommends that the Commission find no reason to believe that Dr. Brian Babin and Brian Babin for Congress and Thomas E. Freeman, as treasurer, violated 2 U.S.C. §§ 441g and 432(c)(2).

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IV. FACTUAL AND LEGAL ANALYSIS -

The Complaint alleges that at the Babin Committee luncheon on August 29, 1996, Mr. Cloeren and Congressman DeLay spoke about making contributions to the Babin Committee, and that Mr. DeLay told DeLay Committee aide Robert Mills and Mr. Cloeren that

Mr. Cloeren could "funnel" money through "
Babin Committee.

other congressional campaigns" to the

A. Cloeren Contributions to Thurmond and Gill Committees

The Complaint alleges that on or about August 30, 1996 Mr. Mills contacted Mr. Cloeren and told him that Mr. Cloeren could contribute to Senator Thurmond's and Congressman Steven Gills' campaign committees, in return for which contributors to those committees would give money to the Babin Committee, and gave Mr. Cloeren the information necessary to contribute to these committees.

Complainant alleges that subsequent to his August 30, 1996 conversation with Mr. Mills, Babin Committee official Walter Whetsell, Dr. Babin contacted him about making contributions to the Gill Committee and the Thurmond Committee

In one of the calls, Mr. Whetsell allegedly pressured Mr. Cloeren to make contributions to these groups by telling Mr. Cloeren that contributors to the Thurmond and Gill campaigns. had already made the pre-agreed contributions to the Babin Committee. Subsequent to this conversation with Mr. Whetsell,

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Mr. Cloeren made \$1,000 contributions to the Gill and Thurmond Committees.

Mr. Cloeren alleges that in exchange for his \$1,000 contribution to Gill for Congress on November 3, 1996, contributions were made by Gill contributors to the Babin Committee. Several Gill contributors made contributions to the Babin Committee: Anne Coates, Floyd Coates, Dawn M. Cone, and Robert L. Cone gave a total of \$3,000 to the Babin Committee on October 23, 1996,²⁴ and Gill contributor Edward H. Cone gave \$1,000 to the Babin Committee on October 30, 1996. Complainant specifically alleges that the Edward H. Cone and Anne Coates contributions were the quid pro quo contributions made in exchange for his contribution to the Gill Committee, without explaining how he comes to this conclusion. No response to the Complaint was received from Steven Gill,²⁵ Anne Coates, Edward H. Cone or

Similarly, the Complaint alleges that Mr. Cloeren's contribution to the Thurmond Committee was made in exchange for a contribution to the Babin Committee. On September 30, 1996, Thurmond contributor Gayle O. Averyt contributed \$1,000 to the Babin Committee. Mr. Cloeren made a \$1,000 contribution to the Thurmond Committee on November 5, 1996. Mr. Averyt admits that he made a contribution to the Babin Committee after speaking to Babin Committee official Walter Whetsell and after Mr. Whetsell told him that Mr. Cloeren was

²⁴ Floyd and Anne Coates each contributed \$1,000, and Robert L. and Dawn M. Cone each contributed \$500.00.

²⁵ Mr. Gill's campaign committee's request for termination was granted after the general election in 1996.

interested in making a donation to the Thurmond campaign. Mr. Averyt insists, however, that he did not contribute to the Babin campaign because of or in expectation of Mr. Cloeren's contribution. The Thurmond Committee, now operating as the Palmetto Leadership PAC, denies any knowledge of any contribution swapping scheme. Senator Thurmond also denies any knowledge of any quid pro quo contributions.

Despite Complainant's allegations, neither of these sets of contributions themselves appear to violate the Act, even if they occurred exactly the way Complainant alleges. These contributions do not appear to have been contributions made in the name of another, because Mr. Cloeren did not reimburse either Mr. Averyt or the Gill contributors for their contributions to the Babin Committee. See 2 U.S.C. § 441f. Nor does this Office have any evidence to indicate that the contributions to the Gill Committee and the Thurmond Committee were contributions from Cloeren, Inc. See 2 U.S.C. § 441b(a). Finally, the contributions which Mr. Cloeren, the Gill contributors and Mr. Averyt made do not appear to have been "conduit" or "earmarked" contributions in the sense that those terms are used in the Act and Commission regulations. See 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(a).²⁶ Thus, these transactions do not appear to have been indirect illegal contributions by Mr. Cloeren to the Babin Committee and do not violate the Act.

This Office recommends that the Commission find no reason to believe that Peter Cloeren violated the Act in connection with contributions to the Thurmond and Gill Committees.

²⁶ An "earmarked" contribution is first sent to a "conduit" who then transmits the contribution to the designated committee. To make a legal conduit contribution, the conduit must also convey identifying information about the real contributor along with the contribution to the recipient. See 2 U.S.C. § 441a(a)(8), 11 C.F.R. § 110.6(a). Here, the contributions from Mr. Cloeren were (cont'd. next page)

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This Office also recommends that the Commission find no reason to believe that Anne Coates, Edward H. Cone, and Gayle O. Averyt violated any provision of the Act on the basis of the complaint filed in MUR 4783. This Office also recommends that the Commission find no reason to believe that the Palmetto Leadership PAC (FKA Re-Elect Thurmond Committee) and J. Kershaw Spong, as treasurer, The Honorable Strom Thurmond and Steven Lee Gill violated any provision of the Act on the basis of the complaint filed in MUR 4783. This Office further recommends that the Commission find no reason to believe that Walter Whetsell, Brian Babin and Brian Babin for Congress and Thomas E. Freeman, as treasurer, violated 2 U.S.C. § 441f by soliciting or accepting contributions from Anne Coates, Edward H. Cone, and Gayle O. Averyt or by soliciting contributions to the Gill or Thurmond Committees. This Office also recommends that the Commission find no reason to believe that The Honorable Thomas Dale DeLay and the Tom DeLay Congressional Committee and David Evans, as treasurer, violated the Act in connection with contributions by Mr. Cloeren to the Thurmond or Gill Committees and contributions by Gayle O. Averyt, Anne Coates and Edward H. Cone to the Babin Committee.

not made to a person or entity which then forwarded the money to the Babin Committee.

MUR 4783

First General Counsel's Report

Pages 33-51 discuss matters severed from MUR 4783

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V. RECOMMENDATIONS

Find no reason to believe that The Honorable Thomas Dale DeLay or Tom DeLay Congressional Committee and David Evans, as treasurer, violated 2 U.S.C. § 441f in connection with contributions by Cloeren, Inc. employees to the Babin Committee.

Find no reason to believe that The Honorable Thomas Dale DeLay, and Tom DeLay Congressional Committee and David Evans, as treasurer, violated 2 U.S.C. § 441b(a) by traveling to Orange, Texas, on August 19, 1996 on a flight paid for

by Cloeren, Inc.

Find no reason to believe that that Brian Babin and Brian Babin for Congress and Thomas E. Freeman, as treasurer, violated 2 U.S.C. §§ 441g and 432(c)(2).

Find no reason to believe that Peter Cloeren violated the Act in connection with contributions to the Thurmond and Gill Committees.

Find no reason to believe that Anne Coates, Edward H. Cone and Gayle O. Averyt violated any provision of the Act on the basis of the complaint filed in MUR 4783.

Find no reason to believe that the Palmetto Leadership PAC (FKA Reelect Thurmond Committee) and J. Kershaw Spong, as treasurer, The Honorable Strom Thurmond and Steven Lee Gill violated any provision of the Act on the basis of the complaint filed in MUR 4783.

Find no reason to believe that The Honorable Thomas Dale DeLay, and Tom DeLay Congressional Committee and David Evans, as treasurer, violated the Act in connection with contributions by Mr. Cloeren to the Thurmond and Gill Committees and contributions by Gayle O. Averyt, Anne Coates and Edward H. Cone to the Babin Committee.


Find no reason to believe that Walter Whetsell, Brian Babin, and Brian Babin for Congress and Thomas E. Freeman, as treasurer, violated 2 U.S.C. § 441f by soliciting or accepting contributions by Anne Coates, Edward H. Cone and Gayle O. Averyt or by soliciting contributions to the Gill and Thurmond Committees.

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22.04.405.4244

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6/23/99
Date


Lawrence M. Noble
General Counsel

22-04-405-4246